

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 1.G
Mtg. Date June 7, 2016
Dept. Public Works

Item Title: **2015 CIP Street Rehabilitation Project, New Jersey Avenue Deep Grind, Dig Out and Root Removal from San Miguel to Broadway**

Staff Contact: Mike James, Public Works Director and Tim Gabrielson, City Engineer

Recommendation:

Adopt a resolution (**Attachment B**) awarding a contract for the 2015 CIP Street Rehabilitation Project, New Jersey Avenue Deep Grind, Dig Out and Root Removal from San Miguel to Broadway (Contract No. 2016-19).

Item Summary:

In support of the City's Five-Year Capital Improvement Program, the City invited sealed bids for the "2015 CIP Street Rehabilitation Project, New Jersey Avenue Deep Grind, Dig Out and Root Removal from San Miguel to Broadway," (Contract No. 2016-19) in April 2016. On May 12, 2016, the City received three sealed bids. Staff determined that of the bids received, Portillo Concrete was the lowest responsive and responsible bidder at \$47,664.00.

Staff recommends awarding a contract (Contract No. 2016-19) to Portillo Concrete, and establishing a project budget not to exceed \$52,430.

Fiscal Impact:

TransNet funds were budgeted for this project as part of the Five-Year Capital Improvement Program.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section 15304 | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. Resolution

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 1.G

Mtg. Date June 7, 2016

Item Title: 2015 CIP Street Rehabilitation Project, New Jersey Avenue Deep Grind, Dig Out and Root Removal from San Miguel to Broadway

Staff Contact: Mike James, Public Works Director and Tim Gabrielson, City Engineer

Discussion:

In April 2016, the City invited sealed bids for the 2015 CIP Street Rehabilitation Project, New Jersey Avenue Deep Grind, Dig Out and Root Removal (Contract No. 2016-19) from the City's pre-qualified list of contractors to repair New Jersey from San Miguel to Broadway in preparation for the street segment to be slurry sealed in the future. On May 12, 2016, the City received the three sealed bids. Each company is listed below with its location and project bid total.

Bidder's Name	Location	Amount
MJC Construction	Bonita	\$48,713
Portillo Concrete	Lemon Grove	\$47,664
Ramona Paving	Ramona	\$53,398
Average Bid Amount		\$49,925

The project's cost estimate was \$54,500. The lowest responsive and responsible bid was submitted by Portillo Concrete in the amount of \$47,664.

Staff reviewed Portillo Concrete's project work history, references, and construction license. Its project work history and reference checks were positive. Portillo Concrete has successfully performed similar work for other local governments (e.g. City of La Mesa and City of El Cajon) to include prior work with the City. Portillo Concrete's contractors license is current and in good standing with the State of California. Therefore, staff determined Portillo Concrete is both a responsive and responsible bidder, and recommends the award of this contract. Based on the project scope of work and staff's prior experience with Portillo Concrete, staff recommends the following project budget:

Description	Amount
Construction Costs	\$47,664
Contingency (10%)	\$4,766
Total	\$52,430

Attachment A

It is important to note that the project budget does not include material testing or inspection services that historically have been included in prior public works construction projects. Due to the relatively smaller scope of work and simplistic, routine roadway construction work, project staff will manage all material testing and inspection services in-house.

Conclusion:

Staff recommends that the City Council adopt a resolution (**Attachment B**) awarding the Street Rehabilitation Project, New Jersey Deep Grind, Dig Out and Root Removal contract (Contract No. 2016-19) to Portillo Concrete and establish a project budget not to exceed \$52,430.

Attachment B

RESOLUTION NO. 2016 - _____

**RESOLUTION OF THE LEMON GROVE CITY COUNCIL
AWARDING A CONTRACT FOR THE 2015 CIP STREET REHABILITATION, NEW JERSEY
AVENUE DEEP GRIND, DIG OUT AND ROOT REMOVAL PROJECT**

WHEREAS, the City of Lemon Grove's Five-Year Capital Improvement Program earmarks funding for the "Street Rehabilitation, New Jersey Deep Grind, Dig Out and Root Removal" project; and

WHEREAS, bids were solicited and 3 sealed bids were received for the "Street Rehabilitation, New Jersey Deep Grind, Dig Out and Root Removal" project," (Contract No. 2016-19); and

WHEREAS, bids were opened and read aloud and the lowest responsive and responsible bidder was Portillo Concrete; and

WHEREAS, the City Council finds it in the public interest that a contract for said services be awarded.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby:

1. Awards a contract to Portillo Concrete in the amount of \$47,664 and establishes a project budget not to exceed \$52,430, and
2. Authorizes the City Manager or designee to execute said contract (Exhibit 1), and

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Attachment B – Exhibit 1

**AGREEMENT
BY AND BETWEEN
THE CITY OF LEMON GROVE
AND
PORTILLIO CONCRETE, INCORPORATED**

THIS AGREEMENT is entered into this ____ day of June, 2016, by and between the CITY OF LEMON GROVE, a municipal corporation (the "CITY"), and PORTILLO CONCRETE, INC., a GENERAL ENGINEERING COMPANY (the "CONTRACTOR").

RECITALS

WHEREAS, the CITY desires to employ a CONTRACTOR to provide
**NEW JERSEY DEEP GRIND, DIGOUT, REPAIR AND ROOT REMOVAL FOR
THE 2015-2016 CAPITOL IMPROVEMENTS PROGRAM.**

WHEREAS, the CITY has determined that the CONTRACTOR is a General Engineering Company, Class A, and is qualified by experience and ability to perform the services desired by the CITY, and the CONTRACTOR is willing to perform such services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE
AS FOLLOWS:

1. **ENGAGEMENT OF CONTRACTOR.** The CITY hereby agrees to engage the CONTRACTOR and the CONTRACTOR hereby agrees to perform the services hereinafter set forth in accordance with all terms and conditions contained herein.

The CONTRACTOR represents that all services required hereunder will be performed directly by the CONTRACTOR or under direct supervision of the CONTRACTOR.

2. **SCOPE OF SERVICES.** The CONTRACTOR will perform services as set forth in the attached Exhibit "A".

The CONTRACTOR shall be responsible for all research and reviews related to the work and shall not rely on personnel of the CITY for such services, except as authorized in advance by the CITY. The CONTRACTOR shall appear at meetings cited in Exhibit "A" to keep staff and City Council advised of the progress on the project.

The CITY may unilaterally, or upon request from the CONTRACTOR, from time to time reduce or increase the Scope of Services to be performed by the CONTRACTOR under this Agreement. Upon doing so, the CITY and the CONTRACTOR agree to meet in good faith and confer for the purpose of negotiating a

Attachment B - Exhibit 1

corresponding reduction or increase in the compensation associated with said change in services, not to exceed a factor of 50% from the base amount.

3. PROJECT COORDINATION AND SUPERVISION.

The Engineering Inspector hereby is designated as the Project Manager for the CITY and will monitor the progress and execution of this Agreement. The CONTRACTOR shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this Agreement for the CONTRACTOR.

4. **COMPENSATION AND PAYMENT.** The compensation for the CONTRACTOR shall be based on monthly billings covering actual work performed. Billings shall include labor classifications, respective rates, hours worked and also materials, if any. The total cost for all work described in Exhibit "A" shall not exceed the schedule given in Exhibit "A" (the Base amount) without prior written authorization from the City Manager. Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished consistent with Exhibit "A" as determined by the CITY.

The CONTRACTOR shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the CITY and for furnishing of copies to the CITY, if requested.

5. **LENGTH OF AGREEMENT.** Completion dates or time durations for specific portions of the Project are set forth in Exhibit "A".

6. **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONTRACTOR for this Project, whether paper or electronic, shall become the property of the CITY for use with respect to this Project, and shall be turned over to the CITY upon completion of the Project, or any phase thereof, as contemplated by this Agreement.

Contemporaneously with the transfer of documents, the CONTRACTOR hereby assigns to the CITY and CONTRACTOR thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications or other work prepared under this agreement, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONTRACTOR shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

The CONTRACTOR agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium or method utilize the CONTRACTOR's written work product for the CITY's purposes, and the

Attachment B – Exhibit 1

CONTRACTOR expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the CITY of documents, drawings or specifications prepared by the CONTRACTOR shall relieve the CONTRACTOR from liability under Section 14 but only with respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of this project, unless otherwise mutually agreed.

7. **INDEPENDENT CONTRACTOR.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners or joint venturers with one another. Neither the CONTRACTOR nor the CONTRACTOR'S employees are employees of the CITY and are not entitled to any of the rights, benefits, or privileges of the CITY's employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONTRACTOR and the CONTRACTOR's employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONTRACTOR and its employees. Neither this Agreement nor any interest herein may be assigned by the CONTRACTOR without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONTRACTOR from employing or hiring as many employees, or subcontractors, as the CONTRACTOR may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONTRACTOR with its subcontractor(s) shall require the subcontractor to adhere to the applicable terms of this Agreement.

8. **CONTROL.** Neither the CITY nor its officers, agents or employees shall have any control over the conduct of the CONTRACTOR or any of the CONTRACTOR's employees except as herein set forth, and the CONTRACTOR expressly agrees not to represent that the CONTRACTOR or the CONTRACTOR's agents, servants, or employees are in any manner agents, servants or employees of the CITY, it being understood that the CONTRACTOR, its agents, servants, and employees are as to the CITY wholly independent contractors and that the CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

9. **COMPLIANCE WITH APPLICABLE LAW.** The CONTRACTOR, in the performance of the services to be provided herein, shall comply with all applicable State and Federal statutes and regulations, and all applicable ordinances, rules and regulations of the CITY OF LEMON GROVE, whether now in force or subsequently enacted. The CONTRACTOR, and each of its subcontractors, shall obtain and maintain a current CITY OF LEMON GROVE business license prior to and during performance of any work pursuant to this Agreement.

Attachment B - Exhibit 1

10. **LICENSES, PERMITS, ETC.** The CONTRACTOR represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The CONTRACTOR represents and covenants that the CONTRACTOR shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for the CONTRACTOR to practice its profession.

11. **STANDARD OF CARE.**

A. The CONTRACTOR, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONTRACTOR'S trade or profession currently practicing under similar conditions and in similar locations. The CONTRACTOR shall take all special precautions necessary to protect the CONTRACTOR's employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

B. Unless disclosed in writing prior to the date of this agreement, the CONTRACTOR warrants to the CITY that it is not now, nor has it for the five (5) years preceding, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONTRACTOR's professional performance or the furnishing of materials or services relating thereto.

C. The CONTRACTOR is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONTRACTOR has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONTRACTOR has notified the CITY otherwise, the CONTRACTOR warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONTRACTOR to use due diligence under this sub-paragraph will render the CONTRACTOR liable to the CITY for any increased costs that result from the CITY's later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

12. **NON-DISCRIMINATION PROVISIONS.** The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONTRACTOR will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

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13. **CONFIDENTIAL INFORMATION.** The CITY may from time to time communicate to the CONTRACTOR certain confidential information to enable the CONTRACTOR to effectively perform the services to be provided herein. The CONTRACTOR shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONTRACTOR shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 13, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONTRACTOR, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONTRACTOR without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to the CONTRACTOR by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

The CONTRACTOR shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONTRACTOR shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

CONTRACTOR shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 14.

14. **INDEMNIFICATION AND HOLD HARMLESS.** The CONTRACTOR agrees to defend, indemnify, and hold harmless the CITY OF LEMON GROVE, its officers and employees, against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, resulting from or arising out of the CONTRACTOR's negligent performance of this Agreement.

15. **WORKERS' COMPENSATION.** The CONTRACTOR shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar state or Federal acts or laws applicable; and shall indemnify, and hold harmless the CITY and its officers, and employees from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorney's fees and defense costs presented, brought or recovered against the CITY or its officers, employees, or volunteers, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONTRACTOR under this Agreement.

16. **INSURANCE.** The CONTRACTOR, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, when applicable, to

Exhibit 1

purchase and maintain throughout the term of this agreement, the following insurance policies:

☐ A. If checked, Professional Liability Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

B. Automobile insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include non-owned vehicles.

C. Comprehensive general liability insurance, with minimum limits of \$1,000,000 combined single limit per occurrence, covering all bodily injury and property damage arising out of its operation under this Agreement.

D. Workers' compensation insurance covering all of CONTRACTOR's employees.

E. The aforesaid policies shall constitute primary insurance as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY of cancellation or material change.

F. Said policies, except for the professional liability and worker's compensation policies, shall name the CITY and its officers, agents and employees as additional insureds.

G. If required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CONTRACTOR shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement.

H. Any aggregate insurance limits must apply solely to this Agreement.

I. Insurance shall be written with only California admitted companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company equal financial stability that is approved by the CITY.

J. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY. If the CONTRACTOR does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

17. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including attorneys' fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorney's fees incurred in the prosecution or defense of the action or

Attachment B – Exhibit 1

suit shall not be considered in determining the amount of the judgment or award. Attorney's fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorney's fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney's fees incurred by the prevailing party.

18. **MEDIATION/ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try, in good faith, to settle the dispute by mediation in San Diego, California, in accordance with the Commercial Mediation Rules of the American Arbitration Association (the "AAA") before resorting to arbitration. The costs of mediation shall be borne equally by the parties. Any controversy or claim arising out of, or relating to, this Agreement, or breach thereof, which is not resolved by mediation shall be settled by arbitration in San Diego, California, in accordance with the Commercial Arbitration Rules of the AAA then existing. Any award rendered shall be final and conclusive upon the parties, and a judgment thereon may be entered in any court having jurisdiction over the subject matter of the controversy. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the costs of its own experts, evidence and attorneys' fees, except that the arbitrator may assess such expenses or any part thereof against a specified party as part of the arbitration award.

19. **TERMINATION.** A. This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 60-day's written notice to the CONTRACTOR. During said 60-day period the CONTRACTOR shall perform all services in accordance with this Agreement.

B. This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement, misrepresentation by the CONTRACTOR in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.

C. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONTRACTOR as provided for herein.

D. In the event of termination, all finished or unfinished Memoranda Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONTRACTOR, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the amounts payable hereunder, and less any damages caused the CITY by the CONTRACTOR's breach, if any. Thereafter, ownership of said written material shall vest in the CITY all rights set forth in Section 6.

E. The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONTRACTOR; (2) a reorganization of the CONTRACTOR for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONTRACTOR.

20. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by

Exhibit 1

overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

To the CITY: GARY HARPER, ENGINEERING INSPECTOR
CITY OF LEMON GROVE
3232 Main Street
Lemon Grove, CA 91945-1701

To the CONTRACTOR: PORTILLO CONCRETE, INC.
3527 Citrus St.
Lemon Grove, CA 91945
Lic. #680144

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Section.

21. **CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.** During the term of this Agreement, the CONTRACTOR shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the CITY OF LEMON GROVE. The CONTRACTOR also agrees not to specify any product, treatment, process or material for the project in which the CONTRACTOR has a material financial interest, either direct or indirect, without first notifying the CITY of that fact. The CONTRACTOR shall at all times comply with the terms of the Political Reform Act and the National City Conflict of Interest Code. The CONTRACTOR shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONTRACTOR has a financial interest as defined in Government Code Section 87103. The CONTRACTOR represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

Attachment B – Exhibit 1

☐ If checked, the CONTRACTOR shall comply with all of the reporting requirements of the Political Reform Act and the City of Lemon Grove Conflict of Interest Code. Specifically, the CONTRACTOR shall file a Statement of Economic Interests with the City Clerk of the CITY OF LEMON GROVE in a timely manner on forms which the CONTRACTOR shall obtain from the City Clerk.

The CONTRACTOR shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Paragraph 21 by the CONTRACTOR.

22. **MISCELLANEOUS PROVISIONS.**

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

H. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

J. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

K. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the

Exhibit 1

drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF LEMON GROVE

PORTILLO CONCRETE, INC.

(Corporation – signatures of two corporate officers)

(Partnership – one signature)

(Sole proprietorship – one signature)

By: _____
Lydia Romero
City Manager

By: _____
(Name)

(Title)

APPROVED AS TO FORM:

BY: _____
James Lough
City Attorney

By: _____
(Name)

(Title)